

Restriction is only proper where a search of the entire application present an undue burden on the Examiner. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." *See*, MPEP, 8th Ed., § 803. In this case, the subject application, following a first Restriction Requirement, has already received two Office Actions on the merits. The prior art relevant to all disclosed subject matter should be developed at this point. *See*, MPEP, § 904.03. Therefore, Applicant respectfully submits that an action on all claims present presents no undue burden, and that the Restriction Requirement be withdrawn.

Applicants respectfully traverse the indication that no claim is generic. Even assuming, *arguendo*, that two distinct species are present, Claims 4, 10, 11, 15, 16 and 18-22 recite neither the presence of a light shielding portion above the TFT, nor the position of the pixel electrode with respect to the common electrode (*n.b.*, no claim recites either the pixel electrode or the common electrode "over" each other in any order). Therefore, these claims must be generic to both species.

Moreover, Species must be defined by mutually exclusive characteristics. The courts have held that "[T]he *addition* of a limitation to a claim, as distinguished from the substitution of a limitation, can never result in a claim to a different species, since species claims must be mutually exclusive in scope" *In re Muller*, 417 F.2d 1387, 163 USPQ 641 (CCPA 1969) (emphasis in original). *See also*, MPEP, § 806.04(f). The absence of a positive recitation of a feature in an open structured claim ("comprising"), such as Claims 5 and 14, does not preclude additional features, including in this case, a

light shielding portion formed above the TFT (See Claim 17). Therefore, the Species are not mutually exclusive.

In view of the foregoing, an examination on the merits of the elected claims, at an early date, is earnestly solicited. However, it is respectfully urged that the Restriction Requirement is improper and poorly taken, and should therefore be reconsidered and withdrawn. An action on the merits with respect to all the claims is kindly solicited.

Respectfully submitted,



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